PROGRESS OF THE LAW.

As Marked by Decisions Selected from the Advance Reports.

ASSIGNMENTS.

Benefit of Creditors

Against the dissent of one judge it is decided by the Supreme Court of Mississippi in *Union and Planters' Bank of Memphis* v. *Duncan,* 36 Southern, 690, that where an assignment for the benefit of creditors is made without preferences, and provides that the estate shall be applied towards paying the liabilities of the assignor ratably, a creditor of the assignor who holds collateral security cannot receive dividends upon the face of his claim without crediting the value of the collaterals. Compare *Merrill* v. *Nat. Bank of Jacksonville,* 173 U. S. 131.

BANKS AND BANKING.

Trust Funds

A depositor, though holding money in a fiduciary capacity, may draw it out of the bank at his pleasure, and the bank is bound to honor his checks, and incurs no liability in so doing so long as it does not participate in any misappropriation of funds or breach of trust, though the conduct or course of dealing of the depositor may charge the bank with notice that he is violating his trust: Supreme Court of Texas in *Interstate Nat. Bank* v. *Claxton,* 80 S. W. 604.

CARRIERS.

Contract of Passage

The Supreme Court of Georgia decides in *Georgia, etc., Ry. Co.* v. *Brown,* 47 S. E. 942, that the mere purchase of an ordinary railway ticket by a husband for his wife, even though he pays for it, does not constitute a contract between the husband and the company for the safe transportation of the wife; but the implied contract for safe passage which the law raises from the purchase of the ticket is in favor of the wife, and in her behalf alone can an action be maintained for its breach. Compare *Aiken* v. *Southern Ry. Co.,* 118 Ga. 118.

CHAMPERTY.

Attorney and Client

The relaxation of the rules as to agreements between attorney and client which in cases of negligence seems fairly well established is apparently carried to an even further extent in *Smits* v. *Hogan,* 77 Pac. 390, where the Supreme Court of Washington decides that a contract between attorney and client by which the former agreed to prosecute a suit for the latter for malpractice and pay the necessary disbursements, in consideration of one-third of the amount recovered, is valid. Compare *Courtright* v. *Burnes,* 13 Fed. 317–320.

CONSTITUTIONAL LAW.

Taking of Property

In *Bill Posting Sign Co.* v. *Atlantic City,* 58 Atl. 342, the Supreme Court of New Jersey decides that an ordinance which forbids the erection of signs upon private property in Atlantic City, without regard to whether such signs may be dangerous to public safety, is invalid because it is an attempt to appropriate private property to public use without compensation. The case seems to be of particular importance, in view of the modern tendency towards novelty in advertising, and it may well be questioned whether it is not competent for a State Legislature or a municipality to prohibit many of the modern forms of advertisement in view of their tendency to disfigure a locality.

Rights of Citizens: Organization

In *United States* v. *Moore,* 129 Fed. 630, the United States Circuit Court (N. D. Alabama, S. D.) holds that the right of a citizen to organize miners, artisans, laborers, or persons in any pursuit, as well as the right of individuals in such callings to unite for their own improvement or advancement, or for any other lawful purpose, is a fundamental right of a citizen in all free governments; but it is not a right, privilege, or immunity granted or secured to citizens of the United States by its constitution or laws, and is left solely to the protection of the states. See *Logan* v. *United States,* 144 U. S. 293.

CORPORATIONS.

Pledgor of Stock

The Supreme Court of Iowa decides in *Pendleton* v. *Harris-Emery Co.,* 100 N. W. 117, that the pledgor of stock of a corporation remains the real owner of the stock, and has power to enter into an agreement with the corporation issuing it changing its status on the books of the company from preferred to common stock, subject to the pledgee's lien. It is further decided that the possible rights of the pledgee of stock of a corporation to successfully attack an agreement between the corporation and the pledgor of the stock, purporting to change his holding from preferred to common stock, does not affect the book value of the stock of the corporation, after the agreement has been fully executed, so as to entitle one purchasing other stock of the corporation on a guarantee that the stock embraced in the waiver agreement was common stock to recover from the seller the difference between the book value of the stock of the corporation which was included in the contract of sale with the stock embraced in the waiver agreement, treated as common stock, and the book value thereof with such stock treated as preferred.

FOREIGN CORPORATIONS.

Business in Other States

Against the dissent of two judges, the Supreme Court of Missouri decides in *State Brown Contracting and Building Co.* v. *Cook,* 80 S. W. 929, that where a corporation was organized in New Jersey for a purpose not contrary to the public policy of the state of Missouri, and duly complied with all the statutory requirements necessary to entitle it to do business in Missouri, the facts that all but one of its shares of stock were subscribed for by Missouri citizens, and that its property and business were mainly located in that state, were sufficient to establish that it was formed in New Jersey for the purpose of evading the laws of Missouri, so as to authorize the Secretary of State to refuse to grant it a license to do business in Missouri, under the Laws of Missouri of 1903, p. 121, providing that licenses shall not be granted to foreign corporations where it appears that they were organized by citizens of Missouri for the purpose of evading Missouri laws. Compare *Demarest* v. *Flack,* 128 N. Y. 205.

MASTER AND SERVANT.

Employer's Liability Act

The statutory efforts to restrict the operation of the fellow-servant rule are giving rise to numerous decisions. Among these the recent case of *Southern Ry. Co.* v. *Cheaves,* 36 Southern, 691, decided by the Supreme Court of Mississippi, is of interest. It is there held that under the Mississippi Constitution of 1890, Sec. 193, providing that an employee of a railroad company may recover for injuries resulting from the negligent act of one having a right to direct his services, the employee's right to recover is not limited to cases where he is injured whilst executing at the very time of his injury some special command or order given by his superior officer, but he is entitled to recover if injured by the negligence of a superior officer, or a person having the right to direct his services, whether he is at the time obeying any special command or engaged merely in the discharge of his ordinary duties, the superior officer or person also being engaged in discharging simply the primary duties of his station, and not the positive duties of the master.

NEGLIGENCE.

Place of Public Amusement

Defendant owned and managed a park for public amusement for an admission free. Plaintiff paid the admission fee and entered the park to witness an exhibition of fireworks as advertised by defendant. During the exhibition a rocket was discharged which struck plaintiff and injured her. A third person whose business was that of exhibitor of fireworks did all the work in connection with the sending off fireworks, under a contract with defendant to give the exhibition, and defendant had no control over the details of the work nor over the men who performed it. Under these facts the New York Supreme Court (Appellate Division, Third Department) decides in *Deyo* v. *Kingston Consol. R. Co.,* 88 N. Y. Supp. 487, that defendant was not liable, though the third person was negligent. One judge dissents. Compare the case above referred to with *Boyd* v. *United States Mortgage and Trust Co.* (*infra*) with regard to negligence on the part of the owner of a building.

NEGLIGENCE (Continued).

Owner of Building

It is held by the New York Supreme Court (Appellate Division, First Department) in *Boyd* v. *United States Mortgage and Trust Co.*, 88 N. Y. Supp. 289, that where the owner of a building employed brokers to obtain tenants, and authorized the brokers to conduct their customers into the building, he was liable for injuries sustained by a customer while examining the building in company with the brokers and due to their negligence.

NUISANCE.

Persons Entitled to Sue

The Supreme Court of Texas holds in *Ft. Worth and Rio Grande Ry. Co.* v. *Glenn*, 80 S. W. 992, that where a railway company permitted an old well upon its right of way, near land owned and occupied by plaintiff's father and his family, to become a nuisance, whereby plaintiff was made sick and suffered discomfort and pain, plaintiff was entitled to recover damages therefor, though he had no interest in the property of his father, with whom he resided. Compare *Lockett* v. *Railway Company*, 78 Tex. 211.

Polluting Ice Field

The law with regard to the rights of those who harvest ice seems not to have been developed to any very great extent and a new decision in reference to it is always welcome. The New York Supreme Court (Special Term, Ulster County) decides in *American Ice Co.* v. *Catskill Cement Co.*, 88 N. Y. Supp. 455, that where an ice company owned land bordering on the Hudson River, and made the ice formed between its lands and the centre of the river its personal property by staking it out as required by the statute law of New York, it was entitled to restrain a neighboring cement company from so operating its works during the season for harvesting ice as to throw on the ice cinders, ashes, coal-dust, and other substances which might sink into the ice and render it unmerchantable, such operation being a nuisance, as an unreasonable use of defendant's property to the annoyance and damage of another.

PRACTICE.

Joinder of Causes of Action

Against the dissent of two judges it is decided by the New York Supreme Court (Appellate Division, First Department) in *Lynch* v. *Elektron Mfg. Co.*, 88 N. Y. Supp. 70, that an employee who, while at work in an elevator shaft, is injured by the negligent operation of the elevator by a third person, may join his cause of action against the third person with one against the master for failing to furnish him a safe place in which to work, the two defendants being joint tort-feasors. Compare *Colegrove* v. *N. Y., etc., Rd. Cos.*, 20 N. Y. 492.

RAILROADS.

Approach to Station

The Supreme Court of Illinois decides in *Illinois Central R. Co.* v. *Keegan*, 71 N. E. 321, that a railroad company is liable for injuries to a person slipping on snow and ice which the company has knowingly allowed to accumulate on steps leading to its station, though the accumulation does not lead to an obstruction to travel. Compare *Weston* v. *New York Elevated Railroad Co.*, 73 N. Y. 595.

RELEASE.

Injuries Included

A servant executed a contract of settlement with the master which recited that his throat and breast were injured "by falling on a peg," and that he released the master from all claims and demands arising from contract or tort. Thereafter the servant became blind as a result of the accident. Under these facts the Supreme Court of Texas decides in *Quebe* v. *Gulf, C. and S. F. Ry. Co.*, 81 S. W. 20, that the release covered the injury to the servant's sight. The settlement was not void for mistake on the theory that, having had no knowledge of the injury to his sight, the servant did not intend to release his claim therefor.

STREET RAILROADS.

Abutting Owners

It is held by the Supreme Court of Indiana in *Mordhurst* v. *Ft. Wayne and S. W. Traction Co.*, 71 N. E. 642, that the carriage of light express matter, passengers' baggage, and mail matter upon street cars does not constitute a ground of complaint on the part of abutting lot-owners. The apparent tendency towards the use of elec-

STREET RAILROADS (Continued).

tric railways for the purpose of transporting freight makes this decision of special interest in its relation to the question of the rights of abutting owners to recover for additional burdens upon city streets.

TENANTS IN COMMON.

Against the dissent of two judges the Court of Appeals of New York holds in *Valentine* v. *Healey,* 78 N. E. 913, that a tenant in common can, in opposition to his co-tenant, permit a firm of which he is a member, and which had a lease of the premises for a year, to continue in possession temporarily without subjecting it to the liabilities of an ordinary tenant holding over. See also *Haynes* v. *Aldrich,* 133 N. Y. 287.

Liabilities

WILLS.

By residuary bequest a testatrix gave "all the rest" of all her estate to her husband, and provided that if the husband should not expend the whole of the estate so much of it as remained should go to the brothers and sisters of the testatrix. The Supreme Court of Pennsylvania, construing this provision, holds in *In re Dickinson's Estate,* 58 Atl. 120, that the husband had only the power to consume the estate in good faith, and a mere nominal conversion by marking a judgment to his own use will not prevent the gift over from taking effect. Compare *Pennock's Estate,* 20 Pa. 268.

Construction: Rights of Life Tenant